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2010 Edition

Antenuptial (Premarital) Agreements in Connecticut

A Guide to Resources in the Law Library

- Antenuptial or prenuptial agreement “means an agreement between prospective spouses made in contemplation of marriage.” CONN. GEN. STAT. [§ 46b-36b](#) (2009).
- “An antenuptial agreement is a type of contract and must, therefore, comply with ordinary principles of contract law.” *McHugh v. McHugh*, 181 Conn. 482, 486, 436 A.2d 8 (1980).
- “The validity of prenuptial contracts in Connecticut is governed, since October 1, 1995, by the Connecticut Premarital Agreement Act (the act). General Statutes § 46b-36a et seq. Prior to the act, our Supreme Court had set forth the standards for determining the validity of a prenuptial agreement in *McHugh v. McHugh*, 181 Conn. 482, 436 A.2d 8 (1980)” *Dornemann v. Dornemann*, 48 Conn. Sup. 502, 510, 850 A.2d 273 (2004).
- Antenuptial agreements are also known as premarital agreements.

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Section 1:

Current Law

A Guide to Resources in the Law Library

SCOPE

Bibliographic resources relating to the validity of antenuptial agreements in Connecticut following passage of the Connecticut Premarital Agreement Act

CURRENCY:

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DEFINITIONS:

- **CONNECTICUT PREMARITAL AGREEMENT ACT:** "This act shall take effect October 1, 1995 and shall apply to any premarital agreement executed on or after that date." 1995 CONN. ACTS 170 § 11 Reg. Sess.).
- **PREMARITAL AGREEMENT:** "means an agreement between prospective spouses made in contemplation of marriage [or civil union]." CONN. GEN. STAT. [§ 46b-36b\(1\)](#) (2009).
- **PROPERTY:** "means an interest, present or future, legal or equitable, vested or contingent, in real or personal property, tangible or intangible, including income and debt." CONN. GEN. STAT. [§ 46b-36b \(2\)](#) (2009).
- **PURPOSE:** "The legislative history confirms that the purpose of the act is to recognize the legitimacy of premarital contracts in Connecticut, not to constrain such contracts to a rigid format so as to limit their applicability." Dornemann v. Dornemann, 48 Conn. Sup. 502, 519-520, 850 A.2d 273 (2004).
- **STATUTORY DEFENSES:** "Prenuptial agreements signed after October 1, 1995 can be defeated in Connecticut by statutory defenses: 'Such party did not execute the agreement voluntarily.' 'The agreement was unconscionable when it was executed.' 'The agreement was unconscionable . . . when enforcement is sought.' 'Such party was not provided a fair and reasonable disclosure of the amount, character and value of property, financial obligations and income of the other party.' Gen. Stat. § 46b-36g(a)(1), (2) and (3). These statutory defenses outlined above raise the essential defenses of 'coverture, duress, fraud, illegality not apparent on the face of the pleadings.' Attacks on the validity of a prenuptial agreement must be raised by Special Defenses according to Practice Book rule." McKenna v. Delente, No. FST FA 04-0200412 S (Super. Ct. J.D. Stamford-Norwalk at Stamford, Dec. 20, 2007)

- **FAIR AND REASONABLE DISCLOSURE OF HIS FINANCIAL CIRCUMSTANCES:** “refers to the nature, extent and accuracy of the information to be disclosed, and not to extraneous factors such as the timing of the disclosure.” Friezo v. Friezo, 281 Conn. 166, 183, 914 A.2d 533 (2007).
- **REASONABLE OPPORTUNITY:** “With respect to whether the plaintiff had a ‘reasonable opportunity’ to consult with legal counsel, there is no requirement that a party actually seek or obtain the advice of counsel, only that he or she be afforded a reasonable opportunity to do so.” Friezo v. Friezo, 281 Conn. 166, 204, 914 A.2d 533 (2007).
- **INDEPENDENT COUNSEL:** “a ‘reasonable opportunity to consult with independent counsel’ means simply that the party against whom enforcement is sought must have had sufficient time before the marriage to consult with an attorney other than the attorney representing the party's future spouse.” Friezo v. Friezo, 281 Conn. 166, 204, 914 A.2d 533 (2007).

STATUTES:

- CONN. GEN. STAT. (2009)
Connecticut Premarital Agreement Act
[§ 46b-36a](#). Short title: Connecticut Premarital Agreement Act
[§ 46b-36b](#). Definitions
[§ 46b-36c](#). Form of premarital agreement
[§ 46b-36d](#). Content of premarital agreement
[§ 46b-36e](#). Effect of marriage on premarital agreement
[§ 46b-36f](#). Amendment or revocation of premarital agreement after marriage
[§ 46b-36g](#). Enforcement of premarital agreement
[§ 46b-36h](#). Enforcement of premarital agreement when marriage void
[§ 46b-36i](#). Statute of limitation re claims under premarital agreement
[§ 46b-36j](#). Premarital agreements made prior to October 1, 1995, not affected
- 9C [UNIFORM LAWS ANNOTATED](#) 35 (2001).
Uniform Premarital Agreement Act

FORMS:

- Thomas D. Colin, Editor, [LIBRARY OF CONNECTICUT FAMILY LAW FORMS](#), (2008).
Form #17-001 Letter to Client with Draft Premarital Agreement
Form #17-002 Premarital Agreement
- 2 Alexander Lindey and Louis I. Parley, [Lindey and Parley on Separation Agreements and Antenuptial Contracts](#) (2d ed. 1999).
Chapter 110 , Part B. Forms

- 8A ARNOLD H. RUTKIN ET AL., CONNECTICUT PRACTICE SERIES, [FAMILY LAW AND PRACTICE WITH FORMS](#) (2d ed. 2000).
Chapter 50 §50.57 Sample Prenuptial Agreement

OLR REPORTS:

- Susan Price, Principal Legislative Analyst, Prenuptial Agreements: Declaratory Judgment Actions, CONNECTICUT GENERAL ASSEMBLY, OLR RESEARCH REPORT, [2005-R-0834](#) (2005).
"You asked if Connecticut or other states have a mechanism for determining whether a prenuptial agreement is valid before going forward with a divorce action. You also asked if any state uniformly requires divorcing couples to pay their own attorneys fees."

CASES:

- [Friezo v. Friezo](#), 281 Conn. 166, 204, 914 A.2d 533 (2007).
"General Statutes § 46b-36g (a) (4) specifically provides that the party against whom enforcement of the prenuptial agreement is sought must prove that '[s]uch party was not afforded a reasonable opportunity to consult with independent counsel.' The operative terms for the purpose of this analysis are 'reasonable opportunity' and 'independent counsel.' Although this court has not yet had occasion to construe § 46b-36g (a) (4), appellate courts that have interpreted identical statutory language invariably have held, consistent with the plain statutory wording, that a 'reasonable opportunity to consult with independent counsel' means simply that the party against whom enforcement is sought must have had sufficient time before the marriage to consult with an attorney other than the attorney representing the party's future spouse."
- [Dornemann v. Dornemann](#), 48 Conn. Sup. 502, 521, 850 A.2d 273 (2004). "The plaintiff's claim that enforcement of the premarital agreement would be unconscionable has been reserved and will be addressed at the trial of the present case. The plaintiff executed a prenuptial agreement, after adequate financial disclosures, willingly and voluntarily. There was no coercion or undue influence. The defendant's failure to sign the contract prior to the marriage did not invalidate the contract. He assented to the bargain by marrying the plaintiff on April 13, 1997."
- [Linger v. Sadowski](#), No. FA 01-0728258, Judicial District of Hartford at Hartford, 2002 WL 1492257 (May 31, 2002).
"The defendant's arguments are persuasive. Section 46b-36g(3) does not require total accuracy in the disclosure of assets. It merely requires 'fair and reasonable disclosure.' This will vary from case to case depending upon various factors including the size of the total estate in comparison to the extent of the failure to disclose. In this case, the failure to disclose the real estate interest is neither unfair nor is it unreasonable in light of the size and character of the decedent's estate. The total value of the estate is actually greater than the value disclosed by the decedent although the character of the assets is slightly different."

This is not unfair to the plaintiff."

- Pierce v. Pierce, No. FA 00-0725342, 2001 Ct. Sup. 9189, 9191, 2001 WL 950208 (Jul. 16, 2001). "The plaintiff claims that the agreement of the parties should control whereas the defendant argues against its enforcement. It should be noted that the defendant had entered into a pre-nuptial agreement in her previous marriage whereas the plaintiff had not. It is clear from the defendant's own testimony that all of the statutory criteria set forth in Connecticut General Statute Sec 46b-36g(c). The defendant, however, claimed the plaintiff failed to mention he had a timeshare and had been married more times than he had told the defendant and she would not have married him otherwise. The timeshare omitted by the plaintiff in his premarital disclosure was worthless and was sold at a loss. Further, the court finds that the defendant would have married the defendant notwithstanding the number of his previous marriages. The defendant saw her marriage to the plaintiff as a way out of financial difficulty for her and her daughter."
- Wilkes v. Wilkes, 55 Conn. App. 313, 319-320, 738 A.2d 758 (1999). "The plaintiff claims that this 'mid-nuptial' agreement should be considered the same as premarital agreements that are protected by General Statutes § 46b-36g with respect to disclosure. Section 46b-36g (a) (3), which is applicable to premarital agreements executed on or after October 1, 1995, the effective date of Public Acts 1995, No. 95-170, precludes enforcement of a premarital agreement where, prior to execution, a party is 'not provided a fair and reasonable disclosure of the amount, character and value of property, financial obligations and income of the other party. . . .' The plaintiff asserts that, even if § 46b-36g does not apply, the agreement was not fair and equitable as required by General Statutes § 46b-66. There is no merit to this claim because § 46b-36g (a) (3) requires 'fair and reasonable disclosure,' as opposed to more formal financial affidavits, and the trial court had the benefit of formal financial affidavits at the time it decided that the agreement was fair and equitable."

DIGESTS:

- [ALR Digest](#): *Husband and Wife* (II. Marriage Settlements §29 Antenuptial Settlements)
- [Digest of United States Supreme Court Reports, L.Ed.](#): *Husband and Wife* § 33 Antenuptial Contracts; Marriage Settlements

WEST KEY NUMBERS:

- *Husband and Wife* # 29

ENCYCLOPEDIAS:

- 41 [AM. JUR.](#) 2d *Husband and Wife* (2005).
 - § 81. Prenuptial settlements and agreements
 - § 82. Public policy
 - § 83. —Contemplation of dissolution or divorce

- § 84. Enforceability of certain provisions
- § 85. —Support, maintenance, or alimony upon divorce
- § 86. Enactment of statutes, in general
- § 87. Agreements under the Uniform Premarital Agreement Act
- § 88. Retroactive application of statute
- § 89. Status as contract, generally
- § 90. Formal requirements
- § 91. Consideration
- § 92. Fairness standards, generally
- § 93. Fairness and unconscionability
- § 94. Under the Uniform Premarital Agreement Act
- § 95. Change in circumstances; infidelity; abandonment
- § 96. Confidential relationship
- § 97. Duty to disclose
- § 98. —Extent of duty
- § 99. Fraud; misrepresentation
- § 100. Voluntariness
- § 101. —Conditioning marriage upon execution of agreement
- § 102. Independent legal advice
- § 103. General rules; liberal construction
- § 104. Intent of parties
- § 105. Introductory recitals; other rules
- § 106. Discharge; release; alteration by parties

- [ALR Index](#). Antenuptial Agreements.
- 3 [ALR5th](#) 394. Failure to disclose extent or value of property owned as ground for avoiding premarital contract.
- § 137. Evidence 41 [C.J.S.](#) *Husband and Wife* (2006).
 - § 118. Prenuptial agreements, in general
 - § 119. Proper subject-matter of agreement
 - § 120. Validity, in general
 - § 121. Existence and effect of confidential or fiduciary relationship between parties
 - § 122. Necessity of independent legal counsel
 - § 123. Financial disclosure and independent knowledge
 - § 124. Consideration, in general
 - § 125. Marriage
 - § 126. —For or against whom consideration operative
 - § 127. Form, formal requisites
 - § 128. Execution and acknowledgment
 - § 129. Delivery
 - § 130. Registration
 - § 131. Construction, in general
 - § 132. Determination of rights
 - § 133. Termination, in general
 - § 134. Effect of separation or divorce
 - § 135. Timing of commencement of action
 - § 136. Enforcement, generally
 - § 137. Evidence

**TEXTS &
TREATISES:**

- 8 ARNOLD H. RUTKIN ET AL., CONNECTICUT PRACTICE SERIES, [FAMILY LAW AND PRACTICE WITH FORMS](#) (2d ed. 2000).
Chapter 32. Temporary Alimony
§ 32.11 Effect of prenuptial or other agreements relating to alimony
- 8A ARNOLD H. RUTKIN ET AL., CONNECTICUT PRACTICE SERIES, [FAMILY LAW AND PRACTICE WITH FORMS](#) (2d ed. 2000).
Chapter 48. Premarital Agreements
§ 48.1. In general
§ 48.2. Written or oral agreements
§ 48.3. Effect of noncompliance with Statute of Fraud
§ 48.4. Requisites for preparation and execution
§ 48.5. Disclosure requirements
§ 48.6. Legal representation in connection with agreement
§ 48.7. Allowable purposes—Generally
§ 48.8. Particular clauses—Generally
§ 48.9. ----- Separate property
§ 48.10. ---- Joint purchases and contracts
§ 48.11. Enforcement of agreements—Generally
§ 48.12. ---- Specific considerations
§ 48.13. Amendment or revocation of agreements
- [FAMILY LAW PRACTICE IN CONNECTICUT](#) (1996).
Chapter 6. The [New] Connecticut Premarital Agreement Act—The Changes And Impact by Deborah J. Lindstrom
§ 6.1. Introduction
§ 6.2. Brief history
§ 6.3. Ante v. Postnuptial Agreement
§ 6.5. McHugh v. McHugh, the prior law
§ 6.6. Contract freedom
§ 6.7. Alimony and child support
§ 6.8. Safeguards
§ 6.9. Conclusion
- 2 ALEXANDER LINDEY AND LOUIS I. PARLEY, [LINDEY AND PARLEY ON SEPARATION AGREEMENTS AND ANTENUPTIAL CONTRACTS](#) (2d ed. 1999).
Chapter 110. Antenuptial (Premarital) Agreements
§ 110.60. Definitions
§ 110.61. Recognition
§ 110.64. Formal requirements
§ 110.65. Fraud, duress, and misrepresentation
§ 110.66. Reasonableness; Unconscionability
§ 110.67. Disclosure; Knowledge
- 5 ARNOLD H. RUTKIN, GEN. ED., [FAMILY LAW AND PRACTICE](#) (2010).
Chapter 59. Antenuptial agreements
§ 59.01. History and public policy
§ 59.02. Purpose
§ 59.03. Negotiation; Setting the stage

- § 59.04. Execution and validity of agreements
- § 59.05. Topics included in agreements
- § 59.06. Rules of enforcement, modification or Avoidance
- § 59.07. Effect of divorce or separation decree
- § 59.08. Declaratory judgment; Arbitration and Mediation

- AMERICAN LAW INSTITUTE, GEN. ED., [PRINCIPLES OF THE LAW OF FAMILY DISSOLUTION](#) (2002).
 CHAPTER 7. AGREEMENTS
 TOPIC 1. INTRODUCTORY PROVISIONS
 TOPIC 2. REQUIREMENTS FOR AN INFORCEABLE AGREEMENT

LAW REVIEWS:

- Jonathan E. Fields, *Forbidden Provisions in Prenuptial Agreements: Legal and Practical Considerations for the Matrimonial Lawyer*, 21 Journal of the American Academy of Matrimonial Lawyers 414 (2008).
- Louis Parley, *Premarital Agreements in Connecticut. Where We Are And Where We Are Going*, 69 CONNECTICUT BAR JOURNAL 495 (1995).

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**Table 1: Connecticut Premarital Agreement Act:
House Debate**

38 H.R.Proc.,Pt.9,1995 Sess. (Appendix A)	
"This bill establishes standards and guidelines for premarital agreements. It includes what agreements may have in them, what they can include, and also under what conditions the agreements will be unenforceable."	p. 3210
"The bill specifically provides that a premarital agreement may not have any provisions which adversely affect a child of the marriage and has other details with respect to premarital agreements."	p. 3210
" . . . with the enactment of this legislation, if someone had signed some other agreement or it didn't comply with this statute, would it have the legal effect of a contract anyway?" [Response: p. 3212]	p. 3212
" . . . how about a separate agreement made after the effective date that did not entirely comply with the legislation before us?" [Response: pp. 3212-3213]	p. 3212
" . . . what I'm attempting to get into the record here is whether this is a mandate that the only way you can have a premarital agreement in the state of Connecticut is by following this statute or whether or not two consenting adults following a standard contract type format could, in fact, enter into any type of agreement they care to and still be valid." [Response: p. 3214]	p. 3213
" . . . If a particular clause did not fall within any of the categories in Number 3, would the parties be precluded from contracting freely and openly with regard to that subject matter?" {Response: p. 3217]	p. 3217.
"In Section 5 it provides that an agreement can be modified without consideration in writing after the marriage. So, in essence, its like a will. It's an executory contract, I guess, that can be modified at any time by the parties without consideration. . . . Is a premarital agreement during the course of the marriage similar to a will in that it can be mutually modified in this way?" [Response: pp. 3218-3219]	p. 3217
"Are there any standards contained in this bill which are not contained in the standards that we currently use for unconscionability? I mean would a court have to look to this bill or would the court look to existing law on unconscionability?"[Response: p. 3220]	p. 3219
"The only issue that would be removed from the consideration of a jury in terms of this contract would be the issue of unconscionability. All of these other issues, including whether there was fair and reasonable disclosure, whether there was a voluntary waiver, whether certain things had been complied with in section 6 would all be questions of fact to be determined by the trier of facts and not exclusively by the court. Is that correct? [Response: pp. 3221]	p. 3221
"An agreement that is in effect now, if an individual has an agreement that is in effect currently and modifies that agreement, which law would apply, the law at the time that the agreement was entered into or the law at the time that the agreement was modified? [Response: pp. 3222-3223]	p. 3222.

Section 2: Prior Law

A Guide to Resources in the Law Library

SCOPE:

Bibliographic resources relating to the validity of antenuptial agreements in Connecticut executed prior to October 1, 1995—the effective date of the Connecticut Premarital Agreement Act.

DEFINITIONS:

- “The court’s first inquiry, then, is to ascertain whether the agreement complies with the ordinary principles of contract law and whether its terms and the circumstances surrounding its execution are such as to demonstrate that the parties were aware of their legal rights and their respective assets and liabilities, and proceeded by the agreement to alter those rights in a fair and voluntary manner.” McHugh v. McHugh, 181 Conn. 482, 488, 436 A.2d 8 (1980).
- “It is clear that antenuptial agreements will not be enforced where to do so would violate the state statutes or public policy.” Ibid.
- **VALIDITY:** “The validity of prenuptial contracts in Connecticut is governed, since October 1, 1995, by the Connecticut Premarital Agreement Act (the act). General Statutes § 46b-36a et seq. **Prior to the act**, our Supreme Court had set forth the standards for determining the validity of a prenuptial agreement in McHugh v. McHugh, 181 Conn. 482, 436 A.2d 8 (1980), as follows: ‘The validity of an antenuptial contract depends upon the circumstances of the particular case. . . . Antenuptial agreements relating to the property of the parties, and more specifically, to the rights of the parties to that property upon the dissolution of the marriage, are generally enforceable where three conditions are satisfied: (1) the contract was validly entered into; (2) its terms do not violate statute or public policy; and (3) the circumstances of the parties at the time the marriage is dissolved are not so beyond the contemplation of the parties at the time the contract was entered into as to cause its enforcement to work injustice.’ (Citation omitted.) Id., 485-86. The act endorses, clarifies and codifies the McHugh standards.” Dornemann v. Dornemann, 48 Conn. Sup. 502, 510-511, 850 A.2d 273 (2004). (Emphasis added).

STATUTES:

- CONN. GEN. STAT. (2009)
§ [45a-436](#). Succession upon death of spouse. Statutory share.
§ [52-550](#). Statute of Frauds

CASES:

- [Crews v. Crews](#), 295 Conn. 153 (2010).
The trial court determined that the antenuptial agreement was not governed by the provisions of the Connecticut Premarital Agreement Act (act), General Statutes § 46b-36a et seq., presumably because the act applies only to antenuptial agreements entered into on or after October 1, 1995; General Statutes § 46b-36a; and the parties had entered into their agreement on June 24, 1988. The trial court concluded, instead, that the antenuptial agreement was governed by the equitable rules established in *McHugh v. McHugh*, 181 Conn. 482, 436 A.2d 8 (1980).
- [Pite v. Pite](#), No. FA99-0429262S, 2001 Ct. Sup. 2819, 2824-25, 2001 WL 238144 (Feb. 20, 2001). "The existing statute in Connecticut which controls the enforceability of premarital agreements, the Connecticut Premarital Agreement Act, General Statutes § 46b-36a et seq., does not apply to any premarital agreement made prior to October 1, 1995. General Statutes § 46b-36j. Accordingly, the determination of the validity of the parties' prenuptial agreement in this case is governed by the common law."
- [McHugh v. McHugh](#), 181 Conn. 482, 436 A.2d 8 (1980).
Three prong test of validity of antenuptial agreements .
- [Parniawski v. Parniawski](#), 33 Conn. Supp. 44, 46, 359 A.2d 719 (1976). "This state has placed its stamp of approval on a contract entered into in contemplation of marriage in which each prospective spouse released any claim to the property owned by the other at the time of the marriage or thereafter, agreeing that on the death of either, the survivor should have no claim to his or her property."

DIGESTS:

- [Dowling's Digest](#): *Husband and Wife* § 12
- West Key Number: *Husband and Wife* #29

ENCYCLOPEDIAS:

- 41 [AM. JUR. 2d](#) *Husband and Wife* (2005).
§88 Retroactive application of statute
- 8A ARNOLD H. RUTKIN ET AL., CONNECTICUT PRACTICE SERIES, [FAMILY LAW AND PRACTICE WITH FORMS](#) (2d ed. 2000).
Chapter 48. Premarital Agreements
 - § 48.1. In general
 - § 48.2. Written or oral agreements
 - § 48.3. Effect of noncompliance with Statute of Frauds
 - § 48.4. Requisites for preparation and execution
 - § 48.5. Disclosure Requirements
 - § 48.6. Legal representation in connection with agreement
 - § 48.11. Enforcement of agreements—generally
- [FAMILY LAW PRACTICE IN CONNECTICUT](#) (1996).
Chapter 6. The [New] Connecticut Premarital Agreement Act—The Changes And Impact by Deborah J. Lindstrom
 - § 6.5. McHugh v. McHugh, the prior law
- 5 ARNOLD H. RUTKIN, GEN. ED., [FAMILY LAW AND PRACTICE](#) (2010).
Chapter 59. Antenuptial agreement
 - § 59.01. History and public policy
 - § 59.02. Purpose
- 2 ALEXANDER LINDEY AND LOUIS I. PARLEY, [LINDEY AND PARLEY ON SEPARATION AGREEMENTS AND ANTENUPTIAL CONTRACTS](#) (2d ed. 1999).
Chapter 110. Antenuptial (Premarital) Agreements
 - § 110.90. Common law and statutory recognition of premarital agreements

LAW REVIEWS:

- Louis Parley, *Premarital agreements in Connecticut. Where We Are And Where We Are Going*, 69 CONNECTICUT BAR JOURNAL 495 (1995).
- Emy Sigler, *Elgar v. Probate Appeal: The Probate Court's Implied Powers to Construe and to Enforce Prenuptial Agreements*, 13 CONNECTICUT FAMILY LAW JOURNAL, 61 (1995).
- Lawrence P. Weisman, *Value of Recognizing Antenuptial & Postnuptial Agreements in Pendente Lite Hearings*, 2 CONNECTICUT FAMILY LAW JOURNAL 34 (March 1984).
- Michael A. Meyers, *Requirements and Uses of Prenuptial and Postnuptial Agreements*, 4 CONNECTICUT FAMILY LAW JOURNAL 3 (November 1985).
- Louis Parley, *Antenuptial Agreements In Connecticut: An Analysis Of McHugh V. McHugh*, 57 CONNECTICUT BAR JOURNAL 487 (December 1983).

- Arthur E. Balbirer and C. Ian McLachlan, *Survey of 1980 Developments in Connecticut Family Law*, 55 CONNECTICUT BAR JOURNAL 39 (February 1981).

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Table 2: Three Prong Test

<u>McHugh v. McHugh</u> , 181 Conn. 482, 485-486 (1980)
<p>"Antenuptial agreements relating to the property of the parties, and more specifically, to the rights of the parties to that property upon the dissolution of marriage, are generally enforceable where three conditions are satisfied:</p> <ol style="list-style-type: none">(1) the contract was validly entered into;(2) its terms do not violate statute or public policy; and(3) the circumstances of the parties at the time the marriage is dissolved are not so beyond the contemplation of the parties at the time the contract was entered into as to cause its enforcement to work injustice."

Section 3:

Form and Content

A Guide to Resources in the Law Library

SCOPE:

Bibliographic resources relating to the form and content of antenuptial agreements or prenuptial contracts in Connecticut executed after October 1, 1995—the effective date of the Connecticut Premarital Agreement Act

STATUTES:

- CONN. GEN. STAT. (2009)
 - § [46b-36c](#). Form of premarital agreement
 - § [46b-36d](#). Content of premarital agreement
 - § [52-550\(a\)](#). Statute of frauds; written agreement or memorandum
- 9C [UNIFORM LAWS ANNOTATED](#) 35 (2001).
 - Uniform Premarital Agreement Act
 - § 2. Formalities
 - § 3. Content

FORMS:

- 9B [AM. JUR. LEGAL FORMS 2D](#) *Husband and Wife* (2002 revision)
 - § 139:3. Form drafting guide
 - § 139:4. Form drafting guide—Checklist—Matters to be considered in drafting antenuptial agreement
 - § 139:5. Formal requirements—Execution
 - § 139:6. Formal requirements—Acknowledgment
 - §§ 139:7 to 139:27. Basic agreements
 - §§ 139:28 to 139:95. Optional provisions
 - §§ 139:96 to 139:125. Transactions between husband and wife
 - §§ 139:126 to 139:134. Transaction with third parties by husband and wife
- Thomas D. Colin, Editor, [LIBRARY OF CONNECTICUT FAMILY LAW FORMS](#), (2008).
 - Form #17-001 Letter to Client with Draft Premarital Agreement
 - Form #17-002 Premarital Agreement
- 2 ALEXANDER LINDEY AND LOUIS I. PARLEY, [LINDEY AND PARLEY ON SEPARATION AGREEMENTS AND ANTENUPTIAL CONTRACTS](#) (2D ED. 1999).
 - Chapter 110. Antenuptial (Premarital) agreements
 - §§ 110.10-110.43. Forms
 - § 110.60. Definitions
 - § 110.61. Recognition
 - § 110.64. Formal requirements
 - § 110.65. Fraud, duress, and misrepresentation
 - § 110.66. Reasonableness; Unconscionability
 - § 110.67. Disclosure; Knowledge

- 12 JACOB RABKIN AND MARK H. JOHNSON, [CURRENT LEGAL FORMS](#) (2009).
Chapter 10. Domestic Relations
A. Antenuptial agreements
Forms 10.01 to 10.12
- 8A ARNOLD H. RUTKIN ET AL., CONNECTICUT PRACTICE SERIES, [FAMILY LAW AND PRACTICE WITH FORMS](#) (2d ed. 2000).
Chapter 50: §50.57 Sample Prenuptial Agreement
- GARY N. SKOLOFF ET AL., [DRAFTING PRENUPTIAL AGREEMENTS](#) (2003) [includes CD-ROM].
Part VII. Standard clauses for inclusion
Part VIII. Sample prenuptial agreement
- 7 [West's Legal Forms, 3d](#), Domestic Relations (2006).
Chapter 10. Antenuptial Agreements
B. Forms
1. General Agreements
2. Model Clauses

DIGESTS:

- West Key Number: *Husband and Wife* # 29
- [Dowling's Connecticut Digest](#): *Husband and Wife* § 12

ENCYCLOPEDIAS:

- 41 [AM. JUR. 2D](#) *Husband and Wife* (2005).
§ 90. Formal requirements
§ 103. General rules; liberal construction
§ 104. Intent of parties
§ 105. Introductory recitals; other rules
- 41 [C.J.S.](#) *Husband and Wife* (2006).
§ 127. Form
§ 128. Execution and acknowledgment
§ 129. Delivery
§ 130. Registration
§ 132. Determination of rights
§ 133. Termination, generally
§ 136. Enforcement, generally
- *Enforceability of premarital agreement based on fairness of terms and circumstances of execution*, 7 [POF3d](#) 581 (1990).
Includes: "Proof of lack of informed voluntariness in execution of premarital agreement"
- *Transfer Of Assets In Fraud Of Spouse's Antenuptial Contractual Rights*, 14 [POF2d](#) 755 (1977).
Includes: "Proof that transfer of assets constituted a constructive fraud on antenuptial contractual rights of transferor's spouse"

- *Waiver of spousal rights in estate of deceased spouse*, 7 [POF2d](#) 605 (1975).
Includes: "Proof that spouse knowingly waived rights in estate of deceased spouse"
- *Compensation on Dissolution of Marriage for Spousal Contributions to Education*, 31 [Am Jur Trials](#) 1 (1984).
- James T. Tucker, Annotation, *Family Court Jurisdiction To Hear Contract Claims*, 46 [ALR5th](#) 735 (1997).
- James O. Pearson, Annotation, *Failure To Disclose Extent Or Value Of Property Owned As Ground For Avoiding Premarital Contract*, 3 [ALR5th](#) 394 (1992).
- Jay M. Zitter, Annotation, *Antenuptial Contracts: Parties' Behavior During Marriage As Abandonment, Estoppel, Or Waiver Regarding Contractual Rights*, 56 [ALR4th](#) 998 (1987).
- Robert Roy, Annotation, *Modern Status Of Views As To Validity Of Premarital Agreements Contemplating Divorce Or Separation*, 53 [ALR4th](#) 22 (1987).
- Robert Roy, Annotation, *Enforceability Of Premarital Agreements Governing Support Or Property Rights Upon Divorce Or Separation As Affected By Circumstances Surrounding Execution—Modern Status*, 53 [ALR4th](#) 85 (1987).
- Robert Roy, Annotation, *Enforceability Of Premarital Agreements Governing Support Or Property Rights Upon Divorce Or Separation As Affected By Fairness Or Adequacy Of Those Terms—Modern Status*, 53 [ALR4th](#) 161 (1987).
- Andrea G. Nadel, Annotation, *Enforceability Of Agreement Requiring Spouse's Co-Operation In Obtaining Religious Bill Of Divorce*, 29 [ALR4th](#) 746 (1984).
- Annotation, *Spouse's Secret Intention Not To Abide By Written Antenuptial Agreement Relating To Financial Matters As Grounds For Annulment*, 66 [ALR3d](#) 1282 (1975).
- Annotation, *Waiver Of Right To Widow's Allowance By Antenuptial Agreement*, 30 [ALR3d](#) 858 (1970).
- Annotation, *Noncompliance With Statutory Requirements Concerning Form Of Execution Or Acknowledgment As Affecting Validity Or Enforceability Of Written Antenuptial Agreement*, 16 [ALR3d](#) 370 (1967).

**TEXTS &
TREATISES:**

- 8A ARNOLD H. RUTKIN ET AL., CONNECTICUT PRACTICE SERIES, [FAMILY LAW AND PRACTICE WITH FORMS](#) (2d ed. 2000).
Chapter 48. Premarital Agreements
§ 48.1. In general

- § 48.2. Written or oral agreements
- § 48.3. Effect of noncompliance with Statute of Fraud
- § 48.4. Requisites for preparation and execution
- § 48.5. Disclosure requirements
- § 48.7. Allowable purposes—Generally
- § 48.8. Particular clauses—Generally
- § 48.9. ____ Separate property
- § 48.10. ____ Joint purchases and contracts
- [FAMILY LAW PRACTICE IN CONNECTICUT](#) (1996).
 - Chapter 6. The [New] Connecticut Premarital Agreement Act—The Changes And Impact by Deborah J. Lindstrom
 - § 6.6 Contract freedom
 - § 6.7. Alimony and child support
 - § 6.8. Safeguards
- 2 ALEXANDER LINDEY AND LOUIS I. PARLEY, [LINDEY AND PARLEY ON SEPARATION AGREEMENTS AND ANTENUPTIAL CONTRACTS](#) (2d 1999).
 - Chapter 110. Antenuptial (Premarital) Agreements
 - § 110.64. Formal requirements
 - [1] Introduction
 - [2] Statute of fraud
 - [3] Particular statutes
 - [4] Execution
 - [5] Recording
 - § 110.73. Construction
 - § 110.76. Uniform Premarital Agreement Act
 - [3]. Formalities
 - [4]. Content
- 5 ARNOLD H. RUTKIN, GEN. ED., [FAMILY LAW AND PRACTICE](#) (2010).
 - Chapter 59. Antenuptial agreement
 - § 59.04. Execution and validity of agreements
 - § 59.05. Topics included in agreements
 - [1] The parties; Third-party beneficiaries
 - [2] Recitals
 - [3] Personal property
 - [4] Real property
 - [5] Expectancies
 - [6] Contingencies
 - [7] Intellectual property
 - [8] Liabilities
 - [9] Schedule of financial information and relevant documents
 - [10] Notification to third parties
 - [11] Valuation
 - [12] Identification of separate property
 - [13] Increases in value after signing
 - [14] Conveyances
 - [15] Waivers and limitations
 - [16] Parental rights and responsibilities
 - [17] Lifestyle
 - [18] Life, health, and disability insurance;

Personal injury proceeds
[19] Employee benefits
[20] Bankruptcy considerations
[21] Applicable laws
[22] Representation by counsel
[23] Modification
[24] Waiver and enforcement of terms
[25] Other terms

- GARY N. SKOLOFF ET AL., [DRAFTING PRENUPTIAL AGREEMENTS](#) (2003) [includes CD-ROM].
 - Part I. Separate property
 - Part II. Joint property
 - Part III. Marital residence
 - Part IV. Regulating the marriage
 - Part V. Right upon divorce
 - Part VI. Rights upon death
 - Part VII. Standard clauses for inclusion
 - Part VIII. Sample prenuptial agreement
 - Part IX. Litigation case law review
 - Part X. Negotiating prenuptial agreements
 - Part XI. The Uniform Premarital Agreement Act
- 12 JACOB RABKIN AND MARK H. JOHNSON, [CURRENT LEGAL FORMS WITH TAX ANALYSIS](#) (2009).
 - § 10.09. Antenuptial agreements
 - [1] Establishing spouse's rights
 - [2] Gifts under antenuptial agreements
 - [3] Estate taxation
- LYNN D. WARDLE ET AL., [CONTEMPORARY FAMILY LAW: PRINCIPLES, POLICY AND PRACTICE](#) (1988).
 - Chapter 5. Antenuptial Contracts
- SAMUEL GREEN AND JOHN V. LONG, [MARRIAGE AND FAMILY LAW AGREEMENTS](#) (1984).
 - § 2.24. Requirements of writing and proper representation

LAW REVIEWS:

- Louis Parley, *Premarital agreements in Connecticut. Where We Are And Where We Are Going*, 69 CONNECTICUT BAR JOURNAL 495 (1995).

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Table 3: Contents of Antenuptial Agreement

Conn. Gen. Stats. § 46b-36d(a) (2009)
(1) The rights and obligations of each of the parties in any of the property of either or both of them whenever and wherever acquired or located;
(2) The right to buy, sell, use, transfer, exchange, abandon, lease, consume, expend, assign, create a security interest in, mortgage, encumber, dispose of, or otherwise manage and control property;
(3) The disposition of property upon separation, marital dissolution, death, or the occurrence or nonoccurrence of any other event;
(4) The modification or elimination of spousal support;
(5) The making of a will, trust or other arrangement to carry out the provisions of the agreement;
(6) The ownership rights in and disposition of the death benefits from a life insurance policy;
(7) The right of either party as a participant or participant's spouse under a retirement plan;
(8) The choice of law governing the construction of the agreement; and
(9) Any other matter, including their personal rights and obligations.

Section 4:

Enforcement and Defenses

A Guide to Resources in the Law Library

SCOPE:

Bibliographic resources relating to the enforcement of antenuptial agreements or prenuptial contracts in Connecticut including the Premarital Agreement Act

DEFINITION:

- “An issue of unconscionability of a premarital agreement shall be decided by the court as a matter of law.” CONN. GEN. STAT. [§ 46b-36g\(c\)](#) (2009) [Effective October 1, 1995, and applicable to premarital agreements executed on or after that date]

STATUTES:

- CONN. GEN. STAT. (2009)
Chapter 815e. Marriage
[§ 46b-36g](#). Enforcement of premarital agreement. [“. . . shall take effect October 1, 1995, and shall apply to any premarital agreement executed on or after that date.”]
[§ 46b-36h](#). Enforcement of premarital agreement when marriage void
[§ 46b-36j](#). Statute of limitations re claims under premarital agreement
[§ 46b-36j](#). Premarital agreements made prior to October 1, 1995, not affected

CASES:

- [Winchester v. McCue](#), 91 Conn. App. 721,727-728, 882 A.2d 143, 147 (2005). “The burden is not on either party to inquire, but on each to inform, for it is only by requiring full disclosure of the amount, character, and value of the parties’ respective assets that courts can ensure intelligent waiver of the statutory rights involved.’ (Citations omitted.) Id., 486-87. In the present case, the court found, and the record supports, that the plaintiff was sufficiently aware of the defendant’s financial circumstances at the time the agreement was executed so as to intelligently waive her right to any income, real or personal property and any claim to alimony...As noted in *McHugh*, failure to disclose financial information in the prenuptial agreement is not fatal so long as the other party has independent knowledge of the same.’ The court observed in its decision that although neither party had expressly disclosed their respective incomes on the financial statements annexed to the agreement, the agreement was nevertheless valid because the parties had ‘independent knowledge,’...”
- [Friezo v. Friezo](#), No. FA02-0190070 (CT Super. Stamford-Norwalk, Sep. 15, 2004). “The plaintiff did not have any financial disclosure prior to the meeting in the offices of the defendant’s attorneys when she executed the premarital Antenuptial (Premarital) Agreements in CT-22

agreement. The timing of the disclosure rendered it inadequate to provide any possibility of actual knowledge by the plaintiff."

- Dornemann v. Dornemann, No. FA03-0194829 (Apr. 14, 2004), 37 CONN. L. RPTR 74, 75 (June 28, 2004). "The plaintiff asserts that the Premarital Agreement is unenforceable because it: (1) failed to attach written financial disclosures; (2) was executed by the plaintiff as the result of undue influence and lack of free will; (3) was not signed by the defendant and therefore was not in proper form; and (4) was not delivered to the plaintiff after signature by the defendant."
p. 80, "The plaintiff's claim that enforcement of the Premarital Agreement would be unconscionable has been reserved and will be addressed at the trial of this case. The plaintiff executed a prenuptial agreement after adequate financial disclosures, willingly and voluntarily. There was no coercion or undue influence. The defendant's failure to sign the contract prior to the marriage did not invalidate the contract. He assented to the bargain by marrying the plaintiff on April 13, 1997.
The plaintiff's motion in limine to preclude evidence of the Premarital Agreement is denied."
- DeFusco v. DeFusco, 3 Conn. L. Rptr. 145, 150 (1991). "2. The plaintiff was not fully informed by Defendant of the amount, character, and value of the estate On all of the evidence it is found that the ante-nuptial agreement is invalid and unenforceable."
- McHugh v. McHugh, 181 Conn. 482, 436 A.2d 82, 436 A.2d 82 (1980). [Three prong test of validity of prenuptial agreements](#).

DIGESTS:

- West Key Number: Husband and Wife # 28, 29(1)
- [Dowling's Connecticut Digest](#): Husband and Wife § 12

TEXTS & TREATISES:

- 8A ARNOLD H. RUTKIN ET AL., CONNECTICUT PRACTICE SERIES, [FAMILY LAW AND PRACTICE WITH FORMS](#) (2d ed. 2000).
Chapter 48. Premarital Agreements
§ 48.5. Disclosure requirements
§ 48.6. Legal representation in connection with agreement
§ 48.7. Allowable purposes
§ 48.11. Enforcement of agreement—Generally
§ 48.12. ____ Specific considerations
- 5 ARNOLD H. RUTKIN, GEN. ED., [FAMILY LAW AND PRACTICE](#) (2010).
Chapter 59. Antenuptial agreement
§ 59.04. Execution and validity of agreements
§ 59.06. Rules of enforcement, modification or avoidance
§ 59.07. Effect of divorce or separation decree
§ 59.08. Declaratory judgment; Arbitration and mediation

- 2 ALEXANDER LINDEY AND LOUIS I. PARLEY, [LINDEY AND PARLEY ON SEPARATION AGREEMENTS AND ANTENUPTIAL CONTRACTS](#) (2d ed. 1999).
 - Chapter 110. Antenuptial (Premarital) Agreements
 - § 110.65. Fraud, deceit, and misrepresentation
 - § 110.66. Reasonableness; Unconscionability
 - § 110.67. Disclosure; Knowledge
 - § 110.68. Counsel
 - § 110.69. Public policy
 - § 110.71. Burden of proof
 - § 110.75. Breach; remedies; defenses
 - § 110.76. Uniform Premarital Agreement Act [7]. Enforcement
- [FAMILY LAW PRACTICE IN CONNECTICUT](#) (1996).
 - Chapter 6. The [New] Connecticut Premarital Agreement Act—The Changes And Impact by Deborah J. Lindstrom
 - § 6.8. Safeguards
- SAMUEL GREEN AND JOHN V. LONG, [MARRIAGE AND FAMILY LAW AGREEMENTS](#) (1984).
 - Chapter 2. Antenuptial Agreements
 - § 2.07. Validity and enforcement
 - § 2.08. Fairness and the confidential relationship
 - § 2.09. Full disclosure
 - § 2.10. Fair disclosure
 - § 2.11. Antenuptial agreements and divorce

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Table 4: Dornemann v. Dornemann

<p>Dornemann v. Dornemann 48 Conn. Supp. 502, 850 A.2d 273 (2004) [Emphasis added]</p>	
<p>"The plaintiff argues that the premarital agreement is unenforceable because written financial disclosures are not attached." [p. 511]</p>	<p>"The act does not require the attachment to the agreement of written financial disclosures. Where a contract refers to another instrument in such a manner as to establish that the terms and conditions of that other instrument are part of their understanding, the two may be interpreted together as the agreement of the parties. <i>Batter Building Materials Co. v. Kirschner</i>, 142 Conn. 1, 7, 110 A.2d 464 (1954). Attachment of the second instrument to the contract is not a necessity. <i>Id.</i>"</p>
<p>"The plaintiff claims that she was unduly influenced to sign the premarital agreement and that she lacked free will at the time of signature." [p. 513]</p>	<p>"The evidence showed that the plaintiff was a college graduate with experience as a businesswoman. She had sufficient time to reflect upon her decision to proceed. She chose independent legal representation. She had lived with the defendant for more than one year at the time of her signing of the prenuptial agreement. Before the parties decided to marry, the plaintiff knew that the defendant would not consider remarriage without a prenuptial agreement in place. The plaintiff was well aware of the legal rights she was relinquishing. Her execution of the premarital agreement was knowing and voluntary."</p>
<p>"The plaintiff asserts that the defendant's failure to sign the premarital agreement prior to the marriage renders the contract invalid." [p. 514]</p>	<p>"The legislative history confirms that the purpose of the act is to recognize the legitimacy of premarital contracts in Connecticut, not to constrain such contracts to a rigid format so as to limit their applicability. The legislature's use of the word "shall" in § 46b-36c is directory rather than mandatory as to the signature of the party seeking to enforce the premarital agreement. A signature by the party seeking to enforce the contract is a matter of convenience rather than a matter of substance. It is the signature of the party seeking to invalidate the force of the contract that is of the essence in order to assure enforceability." [pp. 519-520]</p> <p>"The plaintiff has shown that the defendant failed to deliver to her before the marriage a version or counter-part signed by the defendant. The plaintiff signed the premarital agreement before a notary on March 17, 1997. The defendant did not sign the premarital agreement prior to the marriage of the parties. The defendant demonstrated his acceptance of the premarital agreement by marrying the plaintiff on April 13, 1997. Since the court finds that the defendant acted in reliance upon the premarital agreement by marrying the plaintiff, the question of delivery of the contract to the plaintiff after signature by the defendant is moot. Delivery of an original or counterpart of a prenuptial agreement to each signing party is not a requirement for validity under common law or under § 46b-36a et seq." [p. 520-521]</p>

Table 5: Enforcement of Antenuptial Agreement

Conn.Gen.Stats §46b-36g (2009) [Effective October 1, 1995, and applicable to premarital agreements executed on or after that date]	
(a) A premarital agreement or amendment shall not be enforceable if the party against whom enforcement is sought proves that: <ol style="list-style-type: none"> (1) Such party did not execute the agreement voluntarily; or (2) The agreement was unconscionable when it was executed or when enforcement is sought; or (3) Before the execution of the agreement, such party was not provided a fair and reasonable disclosure of the amount, character and value of property, financial obligations and income of the other party; or (4) Such party was not afforded a reasonable opportunity to consult with independent counsel 	
(b) If a provision of a premarital agreement modifies or eliminates spousal support and such modification or elimination causes one party to the agreement to be eligible for support under a program of public assistance at the time of separation or marital dissolution, a court, notwithstanding the terms of the agreement, may require the other party to provide support to the extent necessary to avoid such eligibility.	
(c) An issue of unconscionability of a premarital agreement shall be decided by the court as a matter of law.	

Section 5:

Modification or Revocation

A Guide to Resources in the Law Library

SCOPE:

Bibliographic resources relating to the modification and revocation of antenuptial agreements or prenuptial contracts in Connecticut including those executed under the Premarital Agreement Act

DEFINITIONS:

- **Amending or revoking:** "After marriage, a premarital agreement may be amended or revoked only by a written agreement signed by the parties. The amended agreement or the revocation shall be enforceable without consideration." CONN. GEN. STAT. [§ 46b-36f](#) (2009 [effective October 1, 1995 and applicable to premarital agreements executed on or after that date]).
- **Appellate Standard of Review:** "'An appellate court will not disturb a trial court's orders in domestic relations cases unless the court has abused its discretion or it is found that it could not reasonably conclude as it did, based on the facts presented. . . . In determining whether a trial court has abused its broad discretion in domestic relations matters, we allow every reasonable presumption in favor of the correctness of its action.'" (Internal quotation marks omitted.) *Aley v. Aley*, 101 Conn. App. 220, 223, 922 A.2d 184 (2007). *Rosier v. Rosier*, 103 Conn. App. 338, 928 A.2d 1228 (2007).

STATUTES:

- CONN. GEN. STAT. (2009)
Chapter 815e. Marriage
[§ 46b-36f](#). After marriage, a premarital agreement may be amended or revoked only by a written agreement signed by the parties.
- 9C [UNIFORM LAWS ANNOTATED](#) 35 (2001)
Uniform Premarital Agreement Act
§ 5. Amendment, revocation.

FORMS:

- 2 ALEXANDER LINDEY AND LOUIS I. PARLEY, [LINDEY AND PARLEY ON SEPARATION AGREEMENTS AND ANTENUPTIAL CONTRACTS](#) (2d ed. 1999).
Chapter 110. Antenuptial (Premarital) Agreements
§ 110.32. Amendment—Form
§ 110.39. Cancellation of Antenuptial Agreement—Form
§ 110.40. "Sunset" provision—Form

CASES:

- [Sabrowski v. Sabrowski](#), 105 Conn. App. 49, 55, 935 A.2d 1037 (2007). "The party seeking a modification of alimony pursuant to § 46b-86 (a) has the burden of demonstrating that a substantial change in the circumstances of either party has occurred."
- [Hughes v. Hughes](#), 95 Conn. App. 200, 204, 895 A.2d 274 (2006). "The parties acknowledge that the principle of law governing this issue is clear. It is well settled that a court must base its child support and alimony orders on the available net income of the parties, not gross income."

WEST KEY NUMBERS:

- West Key Number: *Husband and Wife*
32.5. Modification
33. Revocation or extinguishment

ENCYCLOPEDIAS:

- 41 [AM. JUR. 2D](#) *Husband and Wife* (2005).
§ 106. Discharge; release; alteration by parties; generally

TEXTS & TREATISES:

- 8A ARNOLD H. RUTKIN ET AL., CONNECTICUT PRACTICE SERIES, [FAMILY LAW AND PRACTICE WITH FORMS](#) (2d ed. 2000).
Chapter 48. Premarital Agreements
§ 48.13. Amendment or revocation of agreement
- 2 ALEXANDER LINDEY AND LOUIS I. PARLEY, [LINDEY AND PARLEY ON SEPARATION AGREEMENTS AND ANTENUPTIAL CONTRACTS](#) (2d ed. 1999).
Chapter 110. Antenuptial (Premarital) Agreements
§ 110.72. Modification; revocation
- 5 ARNOLD H. RUTKIN, GEN. ED., [FAMILY LAW AND PRACTICE](#) (2010).
Chapter 59. Antenuptial Agreements
§ 59.06. Rules of enforcement, modification or avoidance

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Section 6:

Federal Tax Aspect

A Guide to Resources in the Law Library

SCOPE:

Bibliographic resources relating to the federal tax aspects of antenuptial (premarital) in Connecticut

DEFINITIONS:

- **Full and adequate consideration.** "In an antenuptial agreement the parties agree, through private contract, on an arrangement for the disposition of their property in the event of death or separation. Frequently, in exchange for the promises of property, one party agrees to relinquish his or her marital rights in other property. Occasionally, however, the relinquishment of marital rights is not involved. These contracts are generally enforceable under state contract law *Nonetheless, transfers pursuant to an antenuptial agreement are generally treated as gifts between parties, because under the gift tax law the exchange promises are not supported by full and adequate consideration, in money or money's worth.*" (emphasis added). Green v. Commissioner of Internal Revenue, T.C. Memo 1987-503.

STATUTES:

- 26 U.S.C. (2010) Internal Revenue Code
[§ 2043\(b\)](#). Transfers for insufficient consideration.
[§ 2053\(c\)\(1\)\(A\)](#). Expenses, indebtedness, and taxes.
[§ 2056](#). Bequests, etc., to surviving spouse
[§ 2511](#). Transfers in general

REGULATIONS:

- [26 CFR 25.2512-8](#) (2010) Transfers for insufficient consideration

CASES:

- Estate of Herrmann v. Commissioner of Internal Revenue, 85 F.3d 1032, 1036 (2d Cir. 1996). " . . . the right that Harriet traded away in return for a life interest in her husband's apartment was not 'adequate and full consideration in money or money's worth' under [IRC] § 2053(c)(1)(A)."
- Commissioner of Internal Revenue v. Wemyss, 324 U.S. 303, 65 S. Ct. 652, 89 L.Ed. 958(1945).
- Merrill v. Fahs, 324 U.S. 308, 65 S.Ct. 655, 89 L.Ed. 963 (1945).

DIGESTS:

- West Key Number: Internal Revenue # 4159(7)

ENCYCLOPEDIAS:

- Robert Roy, Annotation, *Enforceability Of Premarital Agreements Governing Support Or Property Rights Upon Divorce Or Separation As Affected By Fairness Or Adequacy Of Those Terms—Modern Status*, 53 [ALR4th](#) 161 (1987).
§§ 12[c], 20, 31[b]. Inheritance taxes
- Maurice T. Brunner, Annotation, *Construction And Application Of Statutes Apportioning Or Prorating Estate Taxes*, 71 [ALR3d](#) 247 (1976).
§ 10[b]. Where spouse's right rests on contract
- Maurice T. Brunner, Annotation, *Devise Or Bequest Pursuant To Testator's Contractual Obligation As Subject To Estate, Succession, Or Inheritance Tax*, 59 [ALR3d](#) 969 (1974).

§ 6. Antenuptial or postnuptial contracts

TEXTS & TREATISES:

- 2 ALEXANDER LINDEY AND LOUIS I. PARLEY, [LINDEY AND PARLEY ON SEPARATION AGREEMENTS AND ANTENUPTIAL CONTRACTS](#) (2d ed. 1999).
§ 110.77. Taxes
[1] Federal gift taxes
[2] Federal estate taxes
- 12 JACOB RABKIN AND MARK H. JOHNSON, [CURRENT LEGAL FORMS](#) (2009)
Chapter 10. Domestic Relations
§ 10.09. Antenuptial agreements
[1] Establishing spouse's rights
[2] Gift under antenuptial agreements
[3] Estate taxation
- 2 WILLIAM .J. BROWN, [DIVORCE TAX PLANNING STRATEGIES](#) (1990).
Chapter 15. Antenuptial Agreements
15.1 Introduction
15.2 Tax implications of antenuptial agreements generally
15.3 Nondeductibility of legal fees in connection with antenuptial agreements
15.4 Practitioner Points
Estate planning points. Divorce planning points

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Table 6: Surveys of State Antenuptial Agreement Laws

Subject	Source
Adoption of Uniform Premarital Agreement Act	* Lindey § 110.97. Footnote 1
Affirmative duty to disclose information	*Lindey § 110.93. Footnote 1 lists states where there is an affirmative duty to disclose information between contracting parties.
Allocation of burden of proof if agreement facially unfair	* Lindey § 110.96. Footnote 1
Public policy violations relating to child custody, child support, alimony, property and estate interests	*Lindey § 110.69. Various footnotes
Reasonableness	*Lindey § 110.66. Footnote 1 lists states which evaluate the reasonableness for wife. Footnote 3, states requiring to both husband and wife.
Recognition of alimony provisions	* Lindey § 110.95. Footnote 1
Recognition of premarital agreements	*Lindey § 110.90 [1]. Footnote 1 lists states which recognize the validity of premarital agreements using common law . § 110.90 [2]. Footnote 2 by statute .
Recognition of property division provisions	* Lindey § 110.94. Footnote 1
Requirement of written agreement	* Lindey § 110.91. Footnote 1 lists states where statutes of fraud requires agreement to be in writing. Footnote 2 lists states with particular statute.

* 2 ALEXANDER LINDEY AND LOUIS I. PARLEY, [LINDEY AND PARLEY ON SEPARATION AGREEMENTS AND ANTENUPTIAL CONTRACTS](#) (2D ED. 1999). Chapter 110. Antenuptial (Premarital) Agreements.

Section 7:

State Tax Aspect

A Guide to Resources in the Law Library

SCOPE:

Bibliographic resources relating to the state tax aspects of antenuptial (premarital) agreements in Connecticut

STATUTES:

- CONN. GEN. STAT. (2009)
[§ 12-341\(e\)](#). Taxable transfer for persons dying on and after July 1, 1959 and prior to July 1, 1963
[§ 12-341b](#). Taxable transfer for persons dying on and after July 1, 1963
(e) in payment of a claim against the estate of a deceased person arising from a contract made by him and payable by its terms at or after his death, but a claim created by an antenuptial agreement made payable by will shall be considered as creating a debt against the estate and shall not constitute a taxable transfer. If any transfer specified in subdivisions (c), (d) and (e) of this section is made for a valuable consideration, so much thereof as is the equivalent in money value of the money value of the consideration received by the transferor shall not be taxable, but the remaining portion shall be taxable. If it becomes necessary or appropriate in ascertaining such value to use mortality tables, the American Men's Ultimate Mortality tables at four per cent compound interest shall be used, so far as applicable.

ENCYCLOPEDIA S:

- Maurice T. Brunner, Annotation, *Devise Or Bequest Pursuant To Testator's Contractual Obligation As Subject To Estate, Succession, Or Inheritance Tax*, 59 [ALR3d](#) 969 (1974).
§ 6. Antenuptial or postnuptial contracts

TEXTS & TREATISES:

- GAYLE B. WILHELM, [CONNECTICUT ESTATE PRACTICE: DEATH TAXES](#) (3rd ed. 2009).
Chapter 2. The Succession Tax—Transfers, Exemptions, and Deductions
§ 2:5. Transfers by antenuptial agreement or other contract

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Appendix:

Legislative Histories in the Connecticut Courts

Dornemann v. Dornemann, 48 Conn. Sup. 502, 516-520, 850 A.2d 273 (2004).

There is useful legislative history for the act. When the joint judiciary committee of the General Assembly held public hearings on March 17, 1995, the committee took testimony from Edith F. McClure of the Family Law Committee of the Connecticut Bar Association. The Family Law Committee of the Bar Association drafted the act. The statement of purpose from the Family Law Committee of the Connecticut Bar Association began as follows: "The purpose of the proposed Act is to achieve by legislation a statement of public policy recognizing the efficacy of agreements for the management and control of property and personal rights and obligations of spouses. . . . The purpose of the Act is to provide certainty as to the enforceability of the provisions in premarital agreements. . . ." Conn. Joint Standing Committee Hearings, Judiciary, Pt. 7, 1995 Sess., p. 2492. "[T]estimony before legislative committees may be considered in determining the particular problem or issue that the legislature sought to address by the legislation. . . . This is because legislation is a purposive act . . . and, therefore, identifying the particular problem that the legislature sought to resolve helps to identify the purpose or purposes for which the legislature used the language in question." (Internal quotation marks omitted.) *Dowling v. Slotnik*, 244 Conn. 781, 804, 712 A.2d 396, cert. denied sub nom. *Slotnik v. Considine*, 525 U.S. 1017, 119 S.Ct. 542, 142 L.Ed.2d 451 (1998).

"In determining whether the use of the word 'shall' is mandatory or directory, the test is whether the prescribed mode of action is of the essence of the thing to be accomplished. . . . That test must be applied with reference to the purpose of the statute." (Internal quotation marks omitted.) *Sears, Roebuck & Co. v. Board of Tax Review*, 241 Conn. 749, 760, 699 A.2d 81 (1997). The signature of the party seeking enforcement of the terms of the contract is not a necessity. So long as he performs his obligations under the contract, his signature is superfluous from a practical point of view. In the present case, the defendant married the plaintiff. In so doing, he acted in reliance upon the plaintiff's signing of the premarital agreement. The certainty-of-enforceability purpose of the statute is achieved when the person who is disavowing the validity of the document has signed it intelligently and willingly. Having reaped the benefit of the signing, the plaintiff may not now disavow the burdens she assumed as her part of the contract. "One enjoying rights is estopped from repudiating dependent obligations which he has assumed; parties cannot accept benefits

under a contract fairly made and at the same time question its validity." *Schwarzschild v. Martin*, 191 Conn. 316, 321, 464 A.2d 774 (1983).

A colloquy that took place on the floor of the House of Representatives on May 23, 1995, addressed issues relating to technical noncompliance with the act as opposed to substantive noncompliance. As the proponent of the act, Representative Ellen Scalettar of the 114th assembly district responded, through Deputy Speaker Wade A. Hyslop, Jr., to questions put by Representative Richard O. Belden of the 113th assembly district:

"[Representative Belden]: Mr. Speaker, just a question, through you to the proponent please. Mr. Speaker, with the enactment of this legislation, if somebody had signed some other agreement or it didn't comply with this statute, would it have the legal effect of a contract anyway? Through you, Mr. Speaker. . . .

"[Representative Scalettar]: Through you, Mr. Speaker. Yes, it would still be a valid contract. In fact, the bill specifically provides in Section 10 that it will not be deemed to affect the validity of any premarital agreement made prior to the effective date of the Act. . . .

"[Representative Belden]: Then, through you, Mr. Speaker, how about a separate agreement made after the effective date that did not entirely comply with the legislation before us? . . .

"[Representative Scalettar]: Through you, Mr. Speaker. I think the non-compliance would be subject to interpretation by the courts in that circumstance. The language is very broadly written. And I can't really foresee a circumstance where this bill, if enacted, would prevent enforcement of an agreement. . . .

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"[Representative Belden]: Thank you, Mr. Speaker. What I'm attempting to get into the record here is whether this is a mandate that the only way you can have a premarital agreement in the state of Connecticut is by following this statute or whether or not two consenting adults following a standard contract type format could, in fact, enter into any type of agreement they care to and still be valid. And that's what I'm trying to get in the record, Mr. Speaker, through you to Representative Scalettar. If I perchance decided to, if for some reason, was single and decided to marry next year and entered into a contract that was different than the requirements of this file, would it be enforceable? Through you, Mr. Speaker. . . .

"[Representative Scalettar]: Through you, Mr. Speaker. It's very difficult to answer in the abstract. I believe that most agreements would be enforceable because I can't, as I said, I can't really foresee circumstances where the conditions would be in such noncompliance as to render the agreement invalid. But, for example, if the agreement adversely affected the rights of a child, which is in violation of the statute, I do not believe that would be enforceable. It would depend on the actual terms of the agreement." 38 H.R. Proc., Pt. 9, 1995 Sess., pp. 3212-14.

Representative Belden used the word "mandate" to question whether the intent of the act was to supplant common law premarital contracts or merely to steer the process into a standardized form. The discussion that took place on the floor of the House suggests that the legislature intended to do the latter. Shortly after the dialogue between Representatives Belden and Scalettar, the act passed the House with no dissenting vote.

The legislative history confirms that the purpose of the act is to recognize the legitimacy of premarital contracts in Connecticut, not to constrain such contracts to a rigid format so as to limit their applicability. The legislature's use of the word "shall" in § 46b-36c is directory rather than mandatory as to the signature of the party seeking to enforce the premarital agreement. A signature by the party seeking to enforce the contract is a matter of convenience rather than a matter of substance. It is the signature of the party seeking to invalidate the force of the contract that is of the essence in order to assure enforceability.